

**Taking it Off:  
Lifting the Ban on Obscenity**

**By**

**Thomas Saint-John**

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Dr. David Taylor

## **Taking it Off: Lifting the Ban on Obscenity**

The words “pornography” and “obscenity” bring into mind lurid images of a sexual nature. But the later has a connotation of being perverse, offensive, and illegal. The big question is what is the difference between them? And beyond that, who is responsible for making this judgment? In reality, there is no difference between pornography and obscenity, and the outlawing of “obscene” material is censorship on a case by case basis.

### **Porn Protection**

The First Amendment to the U.S. Constitution says, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (First Amendment Center). This literally means that people can say, print for publication, or film anything that they want. *Merriam-Webster’s Online Dictionary* defines “pornography” as “writings, pictures, etc. intended primarily to arouse sexual desire.” Pornography in all its mediums is protected by the First Amendment.

### **Legally Obscene**

Although obscenity one type of pornography, it specifically is **not** protected by the First Amendment. In the U.S. Supreme Court Case *Roth v. U.S.* of 1957, the Court deemed that obscene material is not protected under the First Amendment as either free speech or press, and

that obscenity standards were set by community standards (Lecture Law Library). After the court system had grappled with more obscenity cases, the Supreme Court laid out the basic guidelines for jurors to base whether a case was obscene or not in the 1973 case Miller v. California. These are “Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest, whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, or whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value” (Movie Day at the Supreme Court).

With all the vagueness that these guidelines clearly show, the Supreme Court has further ruled a few other clauses about obscenity. First, it is not illegal to simply possess obscene material. Second, nudity alone is not grounds for obscenity. Every other instance of obscenity, though, is grounds for legal action.

## **Too Hot to Handle**

Radio shock jock Howard Stern has been on the constant defense against accusations of obscenity. He has paid millions of dollars in FCC fines for violating their obscenity laws (Howard Stern.com). In fact, since Stern has been on the air, the FCC has been inflating the amount of fines due from offenders because he won't follow their rules.

The pornography industry has been financially hurt by the laws against obscenity. In 2003, four men were convicted for shipping pornographic videos that were deemed obscene across state lines. Each man faced a maximum penalty of \$250,000 in fines and five years in

jail, along with forfeiting their bank accounts and homes which were involved in the production of the videos (Four Defendants Plead Guilty in Obscenity Case).

Artists have also been harassed by the obscenity laws. Comic book artist Mike Diana was sentenced for publishing his magazine BOILED ANGEL. His punishment was probation for 3 years, terms of which included fines of \$3000, no contact with children under 18 (or within 10 feet of a minor), 1280 hours of community service, maintain full time employment, and at his expense, see a psychiatrist and take journalism courses at his own expense; AND no drawing for his own personal use. Diana was also subject to random police searches of his house to make sure he was complying with his probation (Mike Diana Comix Site For Guilty Artists).

It seems that the government has had a lot of free time on their hands to go chasing down these “criminals”. There is no reason why a media superstar should get fined for saying what his audience wants to hear for the purposes of entertainment. Video producers should not get thrown in jail and bankrupted for shipping their products to customers. Artists should not be persecuted for expressing themselves. Obscenity laws are contradictory to a free economy because they restrict free trade on the basis of personal taste.

## **The Naked Truth**

Obscenity laws are just another way that the government censors the population. America is the land of freedom, but I’m clearly shown the limitations of our freedom when controversial issues like this arise. The First Amendment guarantees the freedoms of speech and press, but only when it doesn’t ruffle anybody’s feathers. The fact that the Supreme Court can’t give a clear definition of what obscenity *is* proves to me that this is a trumped up law created to

give the government a sense of moral righteousness when they go on censorship crusades. Maybe I was wrong by thinking that laws were created to protect citizens' rights, not take them away.

#### Works Cited

“About the First Amendment.” The First Amendment Center. 14 May 2006

[http://www.firstamendmentcenter.org/about.aspx?item=about\\_firstamd](http://www.firstamendmentcenter.org/about.aspx?item=about_firstamd).

“Four Defendants Plead Guilty in Obscenity Case.” Department of Justice. 25 Aug. 2003. 14

May 2006 [http://www.usdoj.gov/opa/pr/2003/August/03\\_crm\\_471.htm](http://www.usdoj.gov/opa/pr/2003/August/03_crm_471.htm).

Howard Stern.com. 14 May 2006 <http://www.howardstern.com/>.

“Mike Diana Found Guilty on 3 Counts of Obscenity.” Mike Diana Comix Site For Guilty

Artists. 14 May 2006 <http://www.testicle.com/mikediana.htm>.

“Movie Day at the Supreme Court or “I Know It When I See It”: A History of the Definition of

Obscenity.” Find Law. 2003 Coollawyer.com. 14 May 2006

<http://library.findlaw.com/2003/May/15/132747.html>.

“Pornography.” Merriam-Webster Online Dictionary. 14 May 2006

<<http://www.m-w.com/dictionary/pornography>>.

“Roth v. United States.” Lecture Law Library. 14 May 2006

<http://www.lectlaw.com/files/case32.htm>.

